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January 26, 1998

By Hand Delivery

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

Re: CC Docket Number 96-45
(Report to Congress)

Dear Ms. Magalie:

Please find enclosed an original and four (4) copies of the "Comments of the Alabama, Alaska, Arkansas, Georgia, Idaho, Kentucky, Maine, Montana, New Hampshire, New Mexico, North Carolina, South Carolina, Vermont and West Virginia State Regulatory Agencies on the Commission's Report to Congress on Universal Service"

I also enclose one additional copy, marked "STAMP AND RETURN COPY." Please date stamp this copy and return it to the person delivering this filing.

Sincerely,

**BIRCH, HORTON, BITTNER
AND CHEROT**

Elisabeth H. Ross

Elisabeth H. Ross
Attorney for The Vermont Public Service Board
and The Vermont Department of Public
Service

cc: ITS
Sheryl Todd, Universal Service Branch (w/diskette)

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

DOCKET FILE COPY ORIGINAL

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
_____)	

**COMMENTS OF THE ALABAMA, ALASKA, ARKANSAS, GEORGIA,
IDAHO, KENTUCKY, MAINE, MONTANA, NEW HAMPSHIRE,
NEW MEXICO, NORTH CAROLINA, SOUTH CAROLINA, VERMONT
AND WEST VIRGINIA STATE REGULATORY AGENCIES ON THE
COMMISSION'S REPORT TO CONGRESS ON UNIVERSAL SERVICE**

The Alabama Public Service Commission, the Alaska Public Utilities Commission, the Arkansas Public Service Commission, the Georgia Public Service Commission, the Idaho Public Utilities Commission, the Kentucky Public Service Commission, the Maine Public Utilities Commission, the Montana Public Service Commission, the New Hampshire Public Utilities Commission, the New Mexico State Corporation Commission, the North Carolina Utilities Commission, the Public Service Commission of South Carolina, the Vermont Public Service Board, the Vermont Department of Public Service (an executive agency responsible for representing the state before the Public Service Board), and the Public Service Commission of West Virginia (collectively, the "Commenting Parties") submit these comments concerning the Commission's Report to Congress on Universal Service under the Telecommunications Act of 1996.¹

¹ See "Common Carrier Bureau Seeks Comment for Report to Congress on Universal Service Under the Telecommunications Act of 1996", DA 98-2, CC Docket No. 96-45, Released

The Commenting Parties support the Commission's goal of ensuring affordable local phone service in rural areas at rates reasonably comparable to those in urban areas. The FCC's 1997 interpretation of Section 254, however, limits federal support to 25% of the amount that the carrier's cost of service exceeds a national benchmark. In its upcoming Report to Congress, the Commission should indicate that it intends to replace the 25% (Federal) / 75% (State) support mechanism with a mechanism which meets the reasonably comparable and affordable standards of Section 254(b). The Commission should also confirm that carriers receiving federal universal service support should use the support to reduce or maintain basic local service rates, as defined by the Commission, and not apply it to reduce interstate access rates. The overall aim should be to correct deficiencies in the Order and moot the key appeal and reconsideration issues.

The 25% Issue

Sufficiency and Related Requirements. Section 254 puts the obligation to ensure universal service squarely on the Commission. Subsection 254(e) refers only to federal support and states that eligible carriers are to receive federal support that is "sufficient to achieve the purposes of this section." The purposes of Section 254 [as listed in Section 254(b)] include making local phone service and other supported services "available at just reasonable and affordable rates" which are "reasonably comparable" to rates "in urban areas."

It follows that, to achieve the sufficiency dictate of Section 254(e), the federal support provided must be enough so that rates in rural areas will be affordable and reasonably comparable to rates in urban areas. Where a carrier receives federal support in an amount less than the difference

January 5, 1998. See also H.R. 2267 (Enacted appropriations bill requiring FCC to report to Congress on Universal Service implementation).

between its costs and the national benchmark price (or national average cost), it will have to make up the difference by charging more than a carrier with costs near the national average cost, thereby defeating the goal of reasonably comparable and affordable rates. In setting support at 25% of the USF need, the 1997 Order leaves a very large difference to be made up.

State Programs. The Commission's response has been that States will naturally see to it that the remaining 75% of the need is raised through State universal service funds. The response overlooks the Subsection 254(e) requirement that the Federal fund be sufficient, a requirement imposed without any reference to the possibility of State funding and that in Section 254(f) Congress gave States the choice of whether to establish their own funds.² The Commission should correct its policy in order to comply with Subsection 254(e) as written, and should announce its intention in the Report to Congress.

The Commission also fails to recognize that the requirement to raise 75% of those funds will result in state surcharges which, when applied to comparable rural and urban rates, makes the net rates uncomparable. Those surcharges would have to be as high as 40% in some rural states.³ Such high surcharges will threaten achievement of the goals of reasonably comparable and affordable rates set by Section 254(b) of the Act.

The surcharge level a state will have to use to fund the remaining 75% of the universal support need depends primarily on three factors:

² See Section 254(f) ("a State may adopt" a universal service program).

³ This difference may well account for why Congress did not make the Federal sufficiency obligation contingent on state contributions. Congress clearly knew that only an interstate (i.e. Federal) fund could shift money between states.

- The state's proportion of citizens in high-cost areas versus low-cost areas.
- The existence of a large urban area filled with low-cost customers who can support the rural high-cost customers within the state.
- The proportion of interstate to intrastate calls made by customers in the state. Because the Federal fund will have the first shot at assessing interstate revenues, state funds are confined to a "first" assessment on intrastate revenues and a secondary assessment on interstate revenues.⁴ States with a high percentage of intrastate calls, generally larger states, may be able to raise the necessary revenue with a lower surcharge.

The states vary greatly in all these factors. Terrain and demographics certainly vary and costs vary with them. A significant number of states have not a single major low cost city to support rural residents within the State. Largely because of variance in population, states range from 40% to 66% in the percent of revenue derived from intrastate calls.

The Commission should seek informal Congressional approval of revisions to the funding mechanism which will eliminate the squeeze faced by states with the characteristics listed above. The most straightforward solution is to fund 100% of the universal service need.⁵ This will not

⁴ In addition, some states may lack jurisdiction under state law to assess interstate revenues in addition to intrastate revenues to develop their own state fund.

⁵ Without prejudice to Vermont's position in the Fifth Circuit litigation, other approaches may be possible. For example, in conjunction with some of the other Commissions signing these Comments, the Vermont Public Service Board is preparing a settlement proposal which will shortly be filed in its final form with the Commission. This proposal has been discussed at NARUC as the "Ad Hoc Proposal." Staff from the Vermont Public Service Board and Maine Public Utilities Commission presented a working version of the proposal to the Universal Service Branch of the Common Carrier Bureau on January 15, 1998, and the working version is now in the record as it was attached to the January 16, 1998 ex parte disclosure of that meeting. The settlement proposal would reduce the size of the Federal High-Cost USF Program while concentrating support to those areas in most need of it. The concentrated support will permit compliance with the reasonable comparability, sufficiency, and affordability criteria of Section 254(b) in all areas of the country. By contrast, the 25% rule adopted in the May 1997 Order spreads support too thinly (25% everywhere) to achieve compliance.

result in an increased "tax" or "assessment", as the corresponding state assessments needed to fund 75% of the universal service will no longer be necessary. Full Federal universal service support eliminates or mitigates the need for varying state universal service surcharges and will contribute greatly towards achieving the goals of reasonably comparable and affordable rates.⁶

Waiver / Lack of Definition of Reasonably Comparable. In the USF Order, the Commission suggests that it may give states in need a larger federal USF payment, but that states should first go through a process of identifying implicit universal service support in intrastate rates, and converting that subsidy to explicit support.⁷ As states do this, the Commission says, it will be able to assess whether additional federal support is necessary to ensure that quality services remain available at affordable rates.⁸ This remedy is flawed because the Commission did not set any standards that states will have to meet to obtain a waiver, or provide any guidance on what evidence states should submit under this process to show that a waiver is justified. It will also be time consuming and cumbersome.⁹

Should the Commission choose not to alter the 25% support rule (although as indicated herein it should abandon that rule), an alternative is to define "reasonably comparable" in such a way that

⁶ The May 1997 Order also continues the pre-1996 support mechanisms until past the year 2000 for "rural carriers." Under these mechanisms rural carriers may be eligible for greater levels of high cost support than non-rural carriers. This distinction works greatly to the disadvantage of states such as Maine, New Mexico and Vermont in which a "non-rural" carrier serves rural areas. The distinction should be eliminated.

⁷ USF Order para. 202.

⁸ Id.

⁹ For example, Vermont filed a petition for waiver of the 200,000 access-line rule in September, 1993, but no action has been taken on the petition. The result of FCC inaction has been higher local rates for customers of NET-Vermont (Bell Atlantic). When the petition was filed in 1993, granting the waiver would have allowed for local rate reductions of \$5.05 per access line per month. Currently (based on NECA's September, 1997 filing), the difference is \$2.79 per access line per month.

the Commission can calculate - based on cost data already available from administering other universal service provisions and not on subjective assessment of whether a State Commission has complied with various criteria - whether a State qualifies for additional support. Exceptions to the 25% support level can then be built into the rule, without the necessity of a long and burdensome waiver process. The 25% rule would then be a rule tailored to meet the needs of all states, rather than a "one size fits all" approach which works well in some states and poorly in others.

Use of USF Support to Reduce Interstate Access Rates

Based on traditional notions of universal service incorporated into the list of principles in Section 254(c), it is clear that Congress intended local phone service to be the primary beneficiary of universal service support. Local phone service is, after all, the most essential of all telephone services. However, unclear language in the May 1997 Order may lead or even (in some eyes) direct LECs to use Federal USF support received to reduce interstate access charges. LECs receiving USF support generally face more competition for interstate access customers than they do for local service customers, and so have the incentive to use the support to reduce interstate access rates. The Report should clarify the Commission's intent that carriers use USF support to keep local rates affordable, as Congress intended.

The Commission's USF Order does not acknowledge that the Fund has always, and must still, support some costs from the intrastate jurisdiction in order to keep rates affordable nationwide. Under the existing high cost support mechanism, the Commission authorized carriers to shift costs to the interstate jurisdiction through Part 36 to reduce their intrastate revenue requirement,¹⁰ and the federal High Cost Fund paid for those shifted intrastate costs. Therefore,

¹⁰ Previously, high cost carriers allocated a greater proportion of loop costs to the interstate jurisdiction based on a Subscriber Plant Factor (SPF) to keep local rates affordable. In

the existing mechanism provided support to keep local rates low. Applying Federal USF support exclusively to interstate access service would remove this support. It would overturn the old system, without any finding that the new system would meet the continuing goal of keeping rates affordable, as well as the new goals, such as keeping rates reasonably comparable.

Conclusion

The Report to Congress presents the FCC with an opportunity to shift direction and avoid the Court reversals which have delayed full implementation of so many other sections of the Telecommunications Act of 1996. The Fifth Circuit is reviewing the FCC's decisions concerning High Cost Support.

However, there are two far better options. One is to make the corrections listed in these Comments, principally raising Federal support to the full 100% of the universal service need. Such a change would not increase the overall assessment level. Another is to consider the State Ad Hoc Group compromise referred to earlier in these Comments, and shortly to be formally filed at the Commission.

1984, the FCC abolished SPF, and required all carriers to allocate 25% of their loop cost to interstate. At the same time, it set up this method of allocating additional loop costs to interstate to ensure that high cost carriers could continue to keep local rates affordable. See Decision and Order, CC Docket No. 80-286, 96 F.C.C.2d 781 para. 22 (1984)

Respectfully submitted this 26th day of January, 1998

The Maine Public Utilities Commission

The Vermont Public Service Board

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January 26, 1998

Alaska Public Utilities Commission

by: 

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Dated: January 23, 1998

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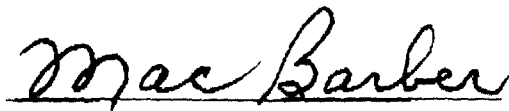
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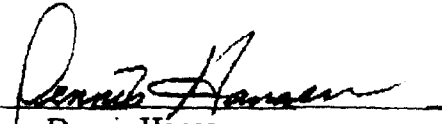
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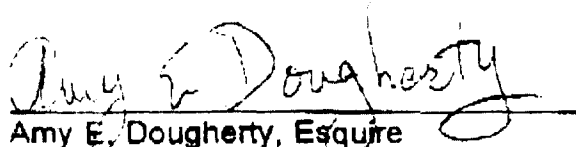
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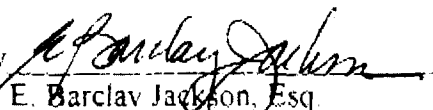
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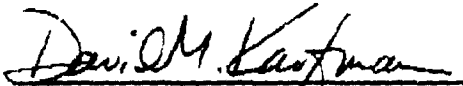
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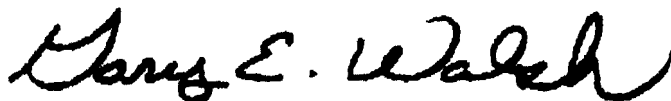
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